6:Wilson E-5 (1934-1938)1939 FN17 Ngonde FN17

439 direct with the ivory traders or with the Kyungu, for cloths or cattle or slaves. And groups of chiefdoms and fiefs co-operated in hoeing the *milasa*.

Nor did the ivory trade enter very deeply into the economic relations of [291] the local rulers with their subjects. The common people usually dressed in exiguous pieces of bark cloth or of a coarse cloth which they manufactured themselves from a kind of cotton; the scarce imported cloths, which came through Mbande, were normally used by chiefs and nobles only. They added to the prestige of the chiefs and nobles by linking them visibly with the opulence of Mbande, but did not much increase their own subjects' economic dependence on them. Though here again we must note the occasional exchanges of ivory and other wealth between [652] commoners and chiefs or nobles. The important economic links between local rulers and their subjects were determined, on the one hand, by the differential bride-price, by polygyny and by their power of requisitioning food, and, on the other hand, by their position as chief hosts to their people.

The ivory-trade, in fact, enabled Mbande to bind the local rulers to it in a kind of permanent hierarchical alliance, but neither the constitution of the local groups nor their autonomy in relation to one another was very much affected thereby.

5. *LEGAL ELEMENTS (MIDDLE PERIOD).*

600 We now come to a third element of the central power of Mbande, the traditional part which it played in the maintenance of law. We will take this topic in two parts: first, the ways in which Mbande maintained its own authority and that of its subordinates, and, second, the part played by Mbande and those lesser authorities in maintaining the common law of Ngonde.

(a). *CONSTITUTIONAL LAW: TREASON ETC.*

● 687 Treason against the Kyungu was summarily punished with little or no legal argument. The commonest form of treason seems to have been 567 too near an approach to one of his wives. We remember that his wives were very closely guarded from all men, for their adultery might magically bring sickness on him, and if he fell ill then the whole land was magically endangered. One side of the hill Mbande is precipitous, and over this cliff (*Iponga*) all traitors were thrown, including such as had looked on his wives naked; while many members of the traitors' families were subsequently enslaved.

"If a man had looked on the wives of the Kyungu bathing, he himself would be killed by being thrown over the cliff and all his

6:Wilson E-5 (1934-1938)1939 FN17 Ngonde FN17

children and relatives would be apprehended and brought to the Kyungu by the messengers. The Kyungu, or rather the nobles of Ngonde, would select the best-looking girls and let the others go. And then it was all over, any kinsfolk who had fled could return in safety to their homes. For in the old days when a man did wrong there was no legal argument and no trial. All his kinsfolk were terrified and the men fled, but the women, not having the strength to flee far, would be apprehended. The messengers would apprehend not only his full siblings and their children but his half siblings and their children too." Not only girls but boys also were sometimes kept as slaves. One of our informants made it clear, however, that it was always possible for a rich family to redeem them later, both boys and girls, by giving one or two beasts in exchange for each.

Our enquiries about the statement that "in the old days there was no legal argument and no trial" brought a clear distinction between ordinary cases and cases of treason either against the Kyungu or against the great chiefs: "In cases between two ordinary men, whether commoners or junior chiefs, there was indeed real legal procedure: a chief would take the case, one would pay damages to the other and smooth relationships would be re-established between them. But what we meant was that when a man wronged the Kyungu or one of the great chiefs then there was no sort of legal argument at all!"

It is not relevant here to enter into any full account of the institution of slavery in Ngonde; but it must be pointed out that it was a very different thing from that introduced by the Arabs in the late 19th century. Few of these early slaves appear to have been sold outside Ngonde, and the Lungwani traders carried away white ivory alone. Nor was there any impassable barrier between slave and free. All our informants maintain that slaves were treated rather as younger sons and daughters than as chattels, with the one exception that they could be sold to another man. A woman slave married by a free man herself at once became free, and the children of two married slaves were free also.

Another form of treason against the Kyungu, we were told, was to insult him by whispered criticism. The present Kyungu said that in the old days a Kyungu used occasionally to be insulted by one of his sons, the chiefs, and that then, "if the Kyungu was a fierce man," he would send the other chiefs against him and have all his cows and wealth taken and his houses burnt. The way in which the Kyungu might be insulted was this: after the election of a new Kyungu perhaps one of the other chiefs would begin to ask secretly why on earth they had chosen such an unsuitable man for the position, and suggest that he had none of the qualities of a chief; then if the Kyungu heard of

6:Wilson E-5 (1934-1938)1939 FN17 Ngonde FN17

687 this he might have him punished. The booty of such a punitive expedition was divided up by the nobles of Ngonde; some going to the Kyungu, some to the chiefs who had done the fighting. (We asked who was in fact summoned to do the fighting.) "He would summon Kalonga and Kalambo and Kilupula. . . . ." ("The Chiefs of Ngana would come too, would they?") "Yes, certainly, they would obey the summons, indignant that anyone should insult the Kyungu; they would carry off the offender's cattle and burn his houses." (We asked for a case of such a punitive expedition:) "I have never heard that any particular chief insulted the Kyungu and so had all his cattle driven off. But I have always heard that this was the custom."

And similar action was taken, so it is said, against any chief or noble who had harmed one of the *valukuta*, the personal messengers of the Kyungu.

Moreover the authority of Mbande is said to have been used to maintain the hierarchical subordination among the lesser chiefs. "The ordinary chiefs obeyed their father, the great chief. If any of them showed himself insolent and disobedient to the great chief then the case would go to Mbande and he would be fined a cow. And if he still refused then the Kyungu would summon all the chiefs to burn him out." We asked for cases of such punitive expeditions, but once again none could be quoted. "We've not heard of any particular cases, for the chiefs were generally far too much afraid to be insolent."

In discussing these occasional punitive expeditions we are on the boundary between legal and military (or violent) procedure,[1] and it is of some importance to draw the distinction correctly. The practicability of organising our modern world for peace depends, in part, upon doing so. Theoretically the distinction is clear, but there will always be particular cases which are at first sight difficult to place certainly on either side of the line. For a punitive action to be legal it is necessary, in the first place, that it fall within an area of established legal order, which meets with no sustained resistance from any social group, and that it be taken by some authority which is there generally recognized as competent;[2] it is necessary, in the second place, that it take a form generally approved by the responsible leaders of the community; and it is necessary, in the third place, that it be directed, not to the destruction, impoverishment or harming of particular persons or groups as such, but solely to the punishment or prevention of particular breaches of

[1] Violence in the more general concept and may be purely individual; warfare is socially organized violence.

[2] Such an authority need not necessarily be political; in the old days in Ngonde fathers as such were in many situations competent to enforce the laws of marriage on their daughters and sons-in-law.

6:Wilson E-5 (1934-1938)1939 FN17 Ngonde FN17

687

the accepted law. In as much as any punitive action falls outside this definition, so far it is military (or violent) in character.

Now the punitive expeditions of the other chiefs of the Ngonde plain against one of their number who had insulted the Kyungu or a great chief were, so far as we can tell from this slight and rather dubious evidence, of a truly legal character. At first glance they appear to be military, but further reflection will convince us they were not. The Ngonde plain was not, indeed, an area of well established legal order in all situations of life; local chiefs, as we have already seen, not infrequently went to war with one another and Mbande was powerless to prevent them. Nevertheless, in the constitutional relationship of the local chiefs to the Kyungu legal order was well established. No cases of sustained rebellion against the Kyungu have come down to us in the chronicle of Ngonde, and the evidence suggests that all the other chiefs alike were indignant at any insult to him; for their rain and health, we remember, were believed to be dependent upon his good will. The expeditions, again, were ordered by the Kyungu himself; while once the insolence had been punished, it appears that no further action was taken.

It is, of course, difficult to believe that any great discrimination was shown in the process of punishment, that any careful enquiries were made into the guilt of the various subjects of the chief concerned, or that only the houses of "the guilty" were burned. But this, even if it were proved, would not necessarily divest the punishment of its legal character. We must not be misled by differences between our own conceptions of legal propriety and those of primitive Ngonde. For us careful discrimination between persons is always essential to justice, but in Ngonde this was not so. The children of a commoner who had seen the wives of the Kyungu naked participated in his guilt and might lawfully be enslaved. So too the subjects of a guilty chief may well have been held guilty also and their houses burnt with perfect propriety. We omitted, however, to settle this point with certainty.

But what of the punitive expeditions to the hills, which we have noted in the previous section, to enforce the tribute in ivory from the distant territorial nobles? Was this a recognized legal procedure or was it war? Were these distant nobles really included in the area of constitutional order or not? Here our evidence is tentative and one-sided. It is clear that these distant nobles and their people were in many ways less closely attached to Mbande than the chiefs, nobles and people of the plain; but the present authorities at Mbande declare that these nobles "had been given their land by the Kyungu" and that, in general they accepted his overlordship without resistance; it was

6:Wilson E-5 (1934-1938)1939 FN17 Ngonde FN17

687 profitable to them and it increased their sense of importance. And Mbande further maintains that the nobles of Ngonde themselves went to their funerals and took part in the selection of their successors.[1] But, as we did not travel to the hills to get their own account, the official account of Mbande must be accepted with caution.

The details of these punitive expeditions, however, were, in all except the occasion, similar to those of a tribal war and will be discussed in that context.

(b) *CONSTITUTIONAL LAW: SUCCESSION.*

643 But the punishment of traitors, insubordinate juniors and tribute-defaulters is only, as it were, the negative side of the maintenance of a constitution. It is also necessary to have some orderly machinery by which the places of authority can be filled. And Mbande derived part of its own authority from its constitutional functions in the appointment of its subordinates.

In the middle period, with which we are dealing, none of the great offices in Ngonde were filled in accordance with purely genealogical right. The Kyungu-ship and the great chiefdoms passed, on the death of their holders, to men constitutionally chosen from the appropriate families; they did not necessarily pass to the holders' own immediate heirs. And so it was also with the fiefs, both in the plain and the hills. In filling the local chiefdoms the strictly genealogical principle was more emphasised in theory but even there it was often in practice modified.

The Kyungu might be taken from any of the great houses of Ngonde which traced their descent either to Mwangonde or Kasyombe, with the one exception of the house of Kalonga. It was usual to take one of the great chiefs themselves, it was essential to take a generous ruling chief. The traditional procedure, which still continues, is as follows: "When a Kyungu dies it is the nobles of Ngonde, those who live near Kyungu, who initiate the discussion of a successor. They confer among themselves and agree that so and so of such and such a house is a suitable man and should be caught as the Kyungu. When they have thus conferred they then call a meeting of all the nobles (of the plain) and discuss the matter again with them. And then, when all are agreed, they go and tell Kalonga and discuss it all over again with him, because he is the senior of all." ("Has Kalonga the power of vetoing their agreed choice, then?" we asked). "Yes, if he considers that the man they suggest is unsuitable he says so and the discussion begins again. So then they catch the chosen man. In the old days they used to go with him to the hill Mbande but nowadays they go to the Government

[1] *Vide infra*, p. 54.

9: Wilson E-5 (1934-1955) 1959
FN17 Ngonde FN17
Nyakyusa

anger which brought the drought then it will rain (for I am no longer angry). But if the rain does not come then it cannot have been my anger, it must have been someone [of the dead Kyungus] whom you forgot to ask about.' 'And if, after that, the rain came soon, then it was not likely that anyone would insult the Kyungu again.' If, however, it did not rain, then the nobles of Ngonde would approach the Kyungu once more and ask why it had not rained. He would say that he did not know, that he himself was certainly not angry, and they must have forgotten someone, they had better go and divine again. And so they would, and then the diviner would tell them that it was so-and-so (one of the dead Kyungus) and they would go and sacrifice in his grove.

Thus to insult Kyungu was not only treasonable, it was blasphemous, and the whole plain was believed to be cursed with drought or disease in reply. An 'insult' might mean any neglect of the obligations of the chiefs and nobles and commoners of the plain to their lord.

The people of Ngonde hoed large fields as tribute to the Kyungu and if they failed to do so 'he grew angry and poured all the water out of the pot in which he kept his rain stones' (*vide infra*, p. 114) and 'the sky dried up'. Then the chiefs called their men to hoe. . . . 'They hoed and hoed and hoed and their wives planted, then the rain came in a torrent. . . . Kyungu created much rain.'

Or if an elephant hunter neglected to send the Kyungu one of the tusks of any elephant he killed he would not kill another. 'The country beneath was angry . . . the shades of the dead Kyungus . . . they were angry saying: "Why do you stint our child?" '

The rainfall in the Ngonde plain is less than half what it is in the Nyakyusa valley and anxiety about rainfall was constantly shown in the communal rituals; elephant hunting was also a matter of concern in a way in which it was not among the Nyakyusa and this too is reflected in rituals; but there was also the preoccupation with health and fertility, as in the prayers at Lubaga. In the groves circling Mbande the nobles prayed: 'May the sterile bear children, may the cattle and fowls increase, may the children sleep and not cry at night, may the witches not injure anyone.' And as we shall see, it was health and fertility that men had in mind when they cleared out the ashes each year after the break of the rains.

Towards Christmas time, when the first maize and the first

9: Wilson E-5 (1934-1955) 1959
FN17 Ngonde FN17
Nyakyusa

789 778 them first, then his grandfather, and father. Others told us that rain stones always came from Kisi country, a very wet strip of land on the north-east shore of the Lake where the clouds always seem to gather when one looks south from the Nyakyusa valley and plain, and a piece of perforated wood used in Ngonde for making rain came from the hills of Misuku, also a very wet country. Kasitile's stones were of two types, but no direct association of male and female was made. However, the Kukwe spoke of a 'mother' stone having young. 'The rain-maker puts back the stone in the potsherd without water (after rain has come) and going later he finds that it has got young, perhaps seven, with the mother there are eight.'

791 [784] [262] The rain-makers are subject to certain taboos: during the dry season they may not wash lest they drive away the rain nor do they shave for 'they compare hair and clouds saying, "Let it be black", they compare a bald pate with sunshine.' And the rain-maker may not eat roasted maize 'for as the maize crackles in the potsherd when it is roasted, so the thunder will crackle in the sky'. He may not eat green maize (which is reaped during the rains) until the dry weather begins 'because he creates rain, which means he creates all the food which grows with the rain'. If he begins eating too soon he may stop the growth. And when the rain-maker is manipulating his instruments a sex taboo is observed. [834] 'When I am making rain,' said Kasitile, 'I do not sleep with my wives for two days, it's taboo. How would Kyala help us if I did?'

[643] In theory the rain-maker always works under the direction of the political authority—the Kyungu or a chief—but he is also thought to wreak vengeance on those who anger him. Kasitile was critical of his colleague in the hills above Isumba: 'He never makes a nice gentle rain, it always destroys food. . . . He is always demanding things from men, and, if they refuse, he brings his rain to destroy things. . . . There is a very strong wind and heavy rain which takes roofs off homes.' But when Kasitile himself was [964] [687] angry, because his son was taken as a tax defaulter to work on the roads, the weather grew bad.

789 People say I am angry, that this rain is because they came and beat me because of tax. This time the tax collectors came to my place and beat me and when I thought, 'It is not the custom with our forefathers for the tax collectors to come at all to men like me', I grew angry and prayed. . . . When I was in MuNgonde the country suffered from hunger, all their children were in trouble. . . . Then I came up, and